IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1565 of 2007

Lalli .. Petitioner

Vs

1. The Commissioner of Police
   Egmore, Chennai-8.

2. The Secretary to Government
   Prohibition and Excise Department
   Tamil Nadu Government
   Secretariat, Chennai-600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.K.J.Nithianandam
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

WEB COPY

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu viz., Dilip @ Dilipkumar, son of Kumar, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand

https://hcservices.ecourts.gov.in/hcservices/

Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in Memo No.374/BDFGISSV/2007, dated 24.9.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Chennai before this Court and set him at liberty.

3.1. The order of detention dated 11.8.2007 was passed on the basis of ground case in Crime No.353 of 2007 for alleged commission of offences under Sections 395 r/w 397 and 506(ii) IPC, complaint of which was lodged by one Jothi. According to the complainant, on 11.8.2007 at about 12.30 hours, he was proceeding towards Kolathur in his motorcycle. When he was nearing Tambaram bus stop, the detenu herein and four others viz., Siva @ Sivakumar, Senthil @ Senthilkumar, Maya @ Mayakrishnan and Rajesh came in two motor cycles and wrongfully restrained him and demanded money and gold ring at the knife point. When he refused to give, Senthil @ Senthilkumar snatched gold ring and cell phone from the complainant. Siva @ Sivakumar voluntarily inserted his hand into the pant pocket of the complainant and took away a sum of Rs.1100/-. Maya @ Mayakrishnan asked him to hand over the gold chain and the complainant replied them as if he has no chain with him. Further, Maya assaulted the complainant over his chest. The complainant raised hue and cry. At that time, Rajesh took out knife and stabbed over his chest by uttering filthy words. The complainant warded off the attck with his right hand. The public who were at the spot came for his rescue. On seeing the public, the detenu and his associates picked up soda water bottles from the nearby shop and hurled the same against them. The bottles fell on the road side and scattered all over the road. The public ran to safer places out of fear of danger to their lives and properties, and thus the detenu created terror and panic at the spot. However, the complainant with the help of public apprehended the detenu and his associates and handed over them to the Inspector of Police, M-1 Madhavaram Police Station. Based on the complaint given by the complainant, a case, as stated above, was registered.

3.2. The second respondent, taking note of the above case as a ground case and finding that there are two adverse cases pending against the detenu in Crime Nos.5 and 133 of 2007 on the file of M-2 MM colony Police Station for the offence punishable under Section 379 I.P.C., having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention branding him as a Goonda.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that the said two adverse cases relate to the offence punishable under Section 379 I.P.C., and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Section 379, IPC and the ground

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention dated 24.9.2007 is set aside and the Habeas Corpus Petition is allowed. The detenu Dilip @ Dilipkumar is directed to be released forthwith, unless he is required in any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Commissioner of Police
   Egmore, Chennai-8.

2. The Secretary to Government
   Prohibition and Excise Department
   Tamil Nadu Government
   Secretariat, Chennai-600 009.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5.The Joint Secretary to Government
Public (Law & Order) Department
Fort St. George, Chennai-9.

AKR (CO)
km/24.12.

HCP No.1565 of 2007.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/